

**IN THE CHANCERY COURT OF LEWIS COUNTY
AT HOHENWALD, TENNESSEE**

IN RE: SENTINEL TRUST COMPANY)
)
)
)

Case No. 4781

FILED
AT 10:16 O'CLOCK A.M.

JAN 22 2007

JANET WILLIAMS, CLERK & MASTER
BY Selena Wix

**ORDER VACATING PREVIOUS ORDER DENYING BATES' MOTION FOR STAY
OF FINAL JUDGMENT CONCERNING SALE OF HOHENWALD OFFICE
BUILDING (ENTERED ON DECEMBER 20, 2006) AND ENTRY OF
SUBSTITUTE ORDER DENYING SAME MOTION**

I. ORDER VACATING PREVIOUSLY FILED ORDER

Through this Order, the Court vacates its Order Denying Bates' Motion for Stay of Final Judgment Concerning Sale of Hohenwald Office Building, which was entered on December 20, 2006.

II. ENTRY OF SUBSTITUTE ORDER

Through this Order, the Court enters the following as its Substitute Order Denying Bates' Motion for Stay of Final Judgment Concerning Sale of Hohenwald Office Building.

On April 12, 2006, the Court entered an order which approved the sale of the Sentinel Trust Hohenwald, Tennessee office building ("Hohenwald Building Sale Order"). The Hohenwald Building Sale Order was entered as a final order under Rule 54.02 Tenn.R.Civ.P. Danny N. Bates ("Bates") has filed a timely Notice of Appeal regarding the final Hohenwald Building Sale Order. On May 3, 2006, Bates filed, with this Court, his Motion for Stay of Final Judgment Entered April 12, 2006 and Supporting Oaths ("Bates' Motion for Stay"). On May 11, 2006, the Acting Commissioner-in-Possession ("Commissioner") and the Sentinel Trust Receiver ("Receiver") filed their Response to Bates' Motion for Stay along with a Notice of

Filing of various legal authority. Bates' Motion for Stay came before the Court for hearing on August 8, 2006.

Based upon Bates' Motion for Stay, the Response of the Commissioner and Receiver, argument of counsel and the record as a whole, the Court finds that Bates' Motion for Stay should be, and hereby is, DENIED.

This action is a receivership action under T.C.A. § 45-2-1501, et seq. Accordingly, a stay of judgment in this Receivership action is considered differently than stays of judgments in what might otherwise be a more traditional legal setting. See Rule 62.01 and Rule 62.03 Tenn.R.Civ.P. The posting of a stay bond, or being declared indigent (as requested by Bates), does not automatically entitle Bates to a stay of the Hohenwald Building Sale Order; rather, in receivership cases, it is discretionary with the Court as to whether to allow a stay of judgment upon considerations such as the harm that the issuance or denial of a stay would cause the parties. Wright & Miller, *Federal Practice and Procedure*, Vol. II, § 2902 (pp. 493-94) and § 2905 (pp. 518-19).¹

Case law under Rule 62 of the Federal Rules of Civil Procedure, which the Court finds instructive and persuasive in this instance, is uniform regarding what considerations a court should weigh in determining a motion to stay: 1) whether the petitioner is likely to prevail on the merits of appeal, 2) whether the petitioner will suffer irreparable injury from denial of the stay, 3) whether other parties will be harmed by issuance of the stay and 4) what public interests are served one way or the other. See e.g., Baker v. Adams County, 310 F.3d 927, 928 (6th Cir.

¹ The Court notes that the relevant language of Rule 62 of the Tennessee Rules of Civil Procedure is substantially the same as the language contained in Rule 62 of the Federal Rules of Civil Procedure. Accordingly, case law and authorities relating to those federal rules can be considered and cited as persuasive. See Harris v. Chern, 33 S.W.2d 741, 745 (Tenn. 2000).

current purchasers and, thereby, delay the orderly progression of the Sentinel Trust Receivership Estate. A delay of the progression of this Receivership delays payments from the Receivership Estate to claimants. Moreover, a stay prohibiting the sale of the Hohenwald Building will result in the expenditure by the Receiver of thousands of dollars of Receivership Estate funds for the upkeep and maintenance of that property. Accordingly, the Court finds that the Commissioner and Receiver, as well as the claimants to the Sentinel Trust Receivership estate, would be harmed if a stay of the Hohenwald Building Sale Order was issued. This injury is all the more pronounced due to Bates' professed inability to post a stay bond due to his asserted poverty.² Finally, the Court finds that the public interest, particularly the interest of claimants to this particular Receivership estate, favors the orderly progression and liquidation of the Receivership estate assets, which the issuance of a stay of the Hohenwald Building Sale Order would frustrate.

Accordingly, regardless of whether or not Bates is indigent, the relevant law places the decision to issue a stay of judgment in this Receivership action in the discretion of the Court. Upon consideration of all the circumstances presented, the Court DENIES Bates' Motion for Stay of the Hohenwald Building Sale Order.

It is so ORDERED, this the 22nd day of January, 2007.



Hon. Jerry Scott
Sitting by Appointment

² The Court notes that there is significant evidence in the record that casts doubt upon Bates' ability to claim poverty status. The Court also notes that all Bates has done to indicate his poverty status is to repeat the language contained in T.C.A. § 20-12-127 -- which relates more to cost bonds than to stay bonds. Determination of whether or not Bates is indigent or whether he could post a bond, however, is not the basis for the Court's decision. Rather, the decision is based upon a finding by the Court that the four-part test set forth above weighs decidedly in favor of denying Bates' Motion for Stay.

Approved and Submitted for Entry:

Janet Kleinfelter (by G. Matherne)
Janet M. Kleinfelter
Attorney General's Office
425 5th Avenue North
P.O. Box 20207
Nashville, TN 37243
(615) 741-7403

Counsel for Acting Commissioner Greg Gonzales

J. Graham Matherne
J. Graham Matherne, #11294
WYATT, TARRANT & COMBS, LLP
2525 West End Avenue, Suite 1500
Nashville, TN 37203-1423
(615) 244-0020

*Counsel for Receivership Management, Inc.,
Receiver of Sentinel Trust Company*

CERTIFICATE OF SERVICE

This is to certify that on January 5th, 2007 a copy of the foregoing Order has been sent by First Class U.S. Mail, postage paid, and also by Federal Express as noted, to:

Donald Schwendimann
12 East Fourth Avenue
P.O. Box 366
Hohenwald, TN 38462
(via Federal Express)

Carrol D. Kilgore
Attorney at Law
95 White Bridge Road
Suite 509, Cavalier Building
Nashville, TN 37205-1427

James S. Chase
John A. Decker
Hunton & Williams LLP
900 South Gay Street, Suite 2000
P.O. Box 951
Knoxville, TN 37901

Larry Stewart
Adams and Reese/Stokes Bartholomew
424 Church Street, Suite 2800
Nashville, TN 37219

David D. Peluso
P.O. Box 250
Hohenwald, TN 38462-0250

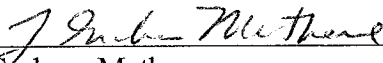
James S. Hereford, Jr.
310 W. College Street
P.O. Box 802
Fayetteville, TN 37334-0802

Diana M. Thimmig
Roetzel & Andress
1375 East Ninth Street
One Cleveland Center, Ninth Floor
Cleveland, OH 44114

Arthur D. Victorine
Shirley Zeitlin & Company Realtors
4301 Hillsboro Road, Suite 100
Nashville, TN 37215

June Bates
205 Bastin Cemetery Road
Hohenwald, TN 38462

Robert and Aieyoung Allen
2611 West Vine Street
Kissimmee, FL 34741



J. Graham Matherne